

MONTGOMERY COUNTY, STATE OF MARYLAND

JUDY JACKSON,	: COMMISSION ON COMMON
	: OWNERSHIP COMMUNITIES
Complainant,	:
	: Case No. 72-07
v.	:
	:
WOODLAWN HOMEOWNERS	:
ASSOCIATION,	:
	:
Respondent.	: Decision Issued: May 28, 2008
	: (Panel: Koenig, Leeds, Vergagni)
	:

JUDGMENT OF DEFAULT

The above-captioned case came before a Hearing Panel of the Commission on Common Ownership Communities for Montgomery County, Maryland (the “Commission”), for proceedings pursuant to Chapter 10B of the Montgomery County Code 2004, as amended, and the Commission's *Default Judgment Procedures*. The duly-appointed Hearing Panel considered the testimony and evidence of record and finds, determines and orders as follows:

PROCEDURAL BACKGROUND

On November 2, 2007, the Complainant, Judy Jackson (“Jackson”) filed a complaint with the Commission alleging that the Respondent, Woodlawn Homeowners Association (“Woodlawn” or “the Association”) had refused to conduct an annual meeting of the members and monthly meetings of the Board of Directors, and that the Board of Directors had failed to respond to Jackson’s phone calls. On November 6, 2007 Commission staff mailed a copy of the complaint to Timothy Scheele, Woodlawn’s President with the usual notice that the Association needed to file a response within thirty (30) days. No response was received from the Association.

On December 12, 2007, Commission staff sent notice to Jackson and the Association about the use of the Commission’s Default Judgment Procedures when a respondent fails to file a response to a complaint. On December 17, 2007, Jackson filed a Request for Order of Default with the Commission and a copy of the request was sent to the Association, pursuant to the certification on the Request. On December 19, 2007, Commission staff sent a letter to both

parties advising them that at the Commission's meeting on January 9, 2008, the Commission would consider taking jurisdiction of the case and scheduling a public hearing on the matter. On January 11, 2008, a Notice of Jurisdiction was sent to the parties advising them that the Commission had accepted jurisdiction of this matter.

On March 28, 2008, in response to a motion from Complainant for entry of an order of default, the Panel issued an Order of Default against Respondent. This Order was sent to the Respondent together with a letter advising the Respondent that it had 30 days to show cause why a final judgment should not issue. To date, the Commission has received no communication from the Association other than a request, filed May 22, 2008, to allow the Association up to 60 days after May 28, 2008, to hold its election.

On May 14, 2008, the Commission received a Request for Entry of Judgment by Default from the Complainant, which asks for an order that requires Respondent to "Conduct annual meetings and select officers/board members."

FINDINGS OF FACT and CONCLUSIONS OF LAW

The record clearly reveals that the Commission's Default Judgment Procedures have been satisfied and that Jackson is entitled to a Judgment of Default. In addition, the subject of the complaint is clearly within the Commission's jurisdiction because it alleges that the Association has failed to conduct meetings and elections (see section 10B-8(3)(B)(i-iv) of the Montgomery County Code).

The only issue remaining is the relief that is to be afforded to the Complainant. The initial complaint requests that the Association "elect officers and board members, conduct monthly meetings, return phone calls to homeowners..." However, in the Order for Default, the Complainant is seeking an order directing the current Board President to resign and is not requesting the relief initially sought in the Complaint. We do not believe that the Complainant intended to abandon the relief that she had initially requested, rather, we construe this as a suggested remedy or amendment to the complaint. This conclusion is reinforced by the Request

for Entry of Judgment, which again asks for an order compelling the Association to call an annual meeting and election.

The Association's Declaration of Covenants, Conditions and Restrictions ("Declaration") provides that an Officer may be removed only by the Board of Directors. Accordingly, we do not have the power to act outside of the requirements of the Association's Declaration and will not order that the President be removed or ordered to resign.

Likewise, there is nothing in the Association's governing documents which mandates that the Association's Board of Directors must meet. Article VII of the Bylaws provides that "[r]egular meetings of the Board of Directors shall be held monthly without notice, at the discretion of the Board of Directors...." Accordingly, if the Association's Board of Directors has determined that a meeting is unnecessary, then we cannot compel the Board to meet. There is nothing in the record to show that the Board has failed to meet when there was business to transact.

However, the Article IV, Section 1 of the Association's Bylaws clearly contemplates that the Association shall hold a meeting of the members every year, on the "same day of the same month of each year..." The record reflects that the last meeting of the membership was held on Sunday, December 17, 2006. The record also reflects that the Complainant has contacted the Board President, Timothy Scheele about the failure of the Association to conduct a meeting of the membership without receiving a response.

Not only is it imperative that the Association hold these annual meetings of the members to involve the membership in the Association, these meetings are necessary for the election of Directors. The Directors have staggered terms, so at least one Director position is up for election at each annual meeting. By failing to hold the annual meeting of the membership, the current Directors remain as hold-over Directors in contravention of the requirements of the Association's governing documents and the membership's right to elect new leaders for the Association.

Finally, the Complainant has asked that the Commission order the President to return her phone calls. While we are unable to order a Board member to respond to a member, this panel finds it extremely troubling that this Board has failed to hold Board meetings or membership meetings, and has failed to respond not only to the Complainant, but to this complaint. Directors are elected by the membership to lead the Association and to make important decisions,

including the expenditure of the assessments that are paid by the members for the Association. It is expected, as a part of their fiduciary duty, that the Board respond to the members who elected them and keep the membership involved and informed of their actions. This Board has failed to meet those expectations in every respect.

In the original complaint, the Complainant requested that the Association reimburse her the \$50.00 filing fee for this complaint, pursuant to Section 10B-13 of the Montgomery County Code. We find that this request is justified in view of the Respondent's failure not only to comply with one of its most important rules, but to respond to this complaint and to the Commission.

ORDER

1. Within 60 days from the effective date of this Order, Woodlawn Homeowners Association must:

- a. conduct an annual meeting of the members; and
- b. provide a copy of this order to all of the members at its expense.

2. Within 30 days after the date of this order, the Association must pay Judy Jackson the sum of \$50.00 as reimbursement for her costs in filing this dispute.

Commissioners Leeds and Vergagni concurred in this opinion.

Any party aggrieved by the action of the Commission may file an appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days of the date of this Order pursuant to the Maryland Rules of Procedure governing administrative appeals.

Ursula A. Koenig, Panel Chair